



## Confidential Business Information and Trade Secrets

### How to Make a Claim of Confidentiality

All information submitted to the Indiana Department of Environmental Management (IDEM), Office of Air Quality (OAQ) becomes a public record. If you submit confidential information, confidential business information or trade secrets to IDEM, OAQ, that information will be available to the public unless you submit the information under a claim of confidentiality.

Article 17.1 of Title 326 of the Indiana Administrative Code (326 IAC 17.1) covers public records, confidential business information, and confidentiality agreements, and Rule 4 of this article specifically addresses confidentiality claims. Confidentiality claims must be made at the time the information is submitted to IDEM, OAQ and the claim of confidentiality must meet the requirements set out in [326 IAC 17.1-1-4](#). If you do not follow the requirements exactly, your confidential information will become a public record, available for any one to inspect and photocopy.

You must clearly designate and segregate your confidential information and you must provide supporting information at the time that you first submit your confidential information to IDEM, OAQ. You must use one of the following methods to claim that your information and any supporting information is confidential:

- A. Attach a cover sheet that instructs IDEM, OAQ which information is to be treated as confidential; or,
- B. Mark each page or item of information as confidential, confidential claim material, trade secret or confidential business information.

#### IMPORTANT NOTE:

In order to help ensure that the information you are claiming as confidential is kept confidential, IDEM strongly recommends that you put the information claimed as confidential in a **separate envelope**, which is clearly labeled "confidential information."

You must also submit supporting information to show that your confidential information is entitled to confidential treatment under [Indiana Code 5-14-3](#). Your supporting information must comply with the following five (5) requirements.

1. You must state your information is a specific type of confidential information under [IC 5-14-3-4\(a\)](#) and [IC 13-14-11-3\(a\)\(1\)](#) or [IC 5-14-3-4\(b\)](#) and [IC 13-14-11-3\(a\)\(2\)](#). If you state that your information is a trade secret under [IC 5-14-3-4\(a\)\(4\)](#), you must submit a narrative statement or documents supporting your claim that the information meets the necessary elements of a trade secret, as defined at [IC 24-2-3-2](#).
2. You must state whether or not IDEM has previously determined your information to be confidential.
3. You must indicate which portion, if any, of your supporting information you claim to be confidential. Your designation and segregation of your confidential information must be done in one of the following methods:
  - A. Attach a cover sheet that instructs IDEM, OAQ which information is to be treated as confidential; or,

- B. Mark each page or item of information as confidential, confidential claim material, trade secret or confidential business information.
- 4. You must state how long you want the information kept confidential, unless you want it kept confidential for the maximum period of 75 years.
- 5. Whenever the claim is based on the commissioner's discretionary power to grant confidential status to information under [IC 5-14-3-4\(b\)](#) and [IC 13-14-11-3\(a\)\(2\)](#), you must state all of the following:
  - A. The statute, rule, permit, or other authority that requires the submission of such information; and,
  - B. Facts demonstrating that the information may be treated as confidential under [IC 5-14-3-4\(b\)](#).

## **What Action Will IDEM Take Regarding a Claim of Confidentiality?**

IDEM will review your claim of confidentiality. If IDEM's Commissioner determines that your information should not be held confidential, IDEM will send you a written notice by certified mail, return receipt requested. The notice will contain information on your right to appeal the Commissioner's determination.

For more information on confidentiality for certain types of business information, please review IDEM's [Nonrule Policy Document Air-031-NPD regarding Emission Data](#).